

IN RE: Implementation of the Federal
Communications Commission's Triennial
Review Order

DOCKET 29054

**NOTICE CONCERNING THE STATUS OF PHASE I AND
THE PROCEDURAL SCHEDULE FOR PHASES II AND III**

BY THE COMMISSION:

I. The Status of Phase I

By Order entered on September 18, 2003, the Commission established this Docket for purposes of fulfilling its responsibilities under the *Triennial Review Order* issued by the Federal Communications Commission (the "FCC").¹ Said Order established as Phase I of this Docket, the inquiry of whether the FCC's national presumption that competitors of Incumbent Local Exchange Carriers ("ILECs") will not be impaired without access to unbundled local circuit switching for enterprise customers should be challenged.² More specifically, the Commission's September 18, 2003 Order noted that the Commission did not, on its own motion, intend to institute proceedings aimed at rebutting the FCC's national presumption of no impairment with respect to local circuit switching for enterprise customers. The Commission based that preliminary determination on staff investigations which revealed that the number of unbundled

¹ *Review of the §251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order on Remand, CC Docket No. 01-00338, Rel. August 21, 2003 (the "*Triennial Review Order*").

² *Id.* at ¶451.

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network element ("UNE") combinations consisting of DS-1 loops and unbundled local switching in Alabama were *de minimis*.

The Commission did indicate, however, that the proceedings necessary to rebut the aforementioned FCC presumption would be established in the event that an affected party submitted a properly supported petition requesting such action by the Commission no later than October 7, 2003. The Commission did not receive any such petition from an interested and/or affected party prior to the established deadline of October 7, 2003.

The only pleading thus far received by the Commission that is specifically related to Phase I in this cause is the October 7, 2003 Petition to Intervene in Phase I which was submitted by the Competitive Carriers of the South, Inc. ("Comp. South").³ Comp. South indicated in its Petition to Intervene that Comp. South did not seek to have the Commission challenge the FCC's national presumption that competing carriers are not impaired in their ability to serve enterprise customers without access to unbundled local circuit switching. Comp. South did, however, reserve the right to submit evidence and make arguments in support of such a request should one be made by another party. Comp. South's Petition to Intervene is due to be granted by the Commission.

On October 9, 2003, CenturyTel of Alabama, LLC ("CenturyTel") also submitted a Petition to Intervene in this cause. CenturyTel's Petition did not raise issues specific to any particular phase of this Docket, but CenturyTel did request that it be allowed to participate in the proceedings in this matter generally. CenturyTel's Petition to Intervene is due to be granted.

³ The members of Comp. South include Access Integrated Networks, Inc., MCI, Birch Telecom, Business Telecom, Inc., Covad Communications Company, AT&T, New South Communications Corp., Talk America, Nuvox Communications, Inc., ITC DeltaCom, Expedius Communications, Momentum Business Solutions, Synergy Communications Company, Network Telephone Corp., KMC Telecom, ZTel Communications, Inc., and IDS Telecom, LLC.

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Given the absence of any request for the Commission to undertake proceedings aimed at overcoming the FCC's national presumption of no impairment with respect to local circuit switching for enterprise customers, the Commission herein determines that Phase I of the proceedings in this Docket are concluded. As recognized by the FCC, however, the conclusion of Phase I at this juncture does not preclude the Commission from later revisiting the issue of whether Competitive Local Exchange Carriers ("CLECs") are impaired without access to unbundled local circuit switching to serve enterprise customers. Such reassessments can be made in the future in the event of changes in the operational and economic criteria that determine whether impairment exists with respect to local switching for enterprise customers.⁴

II. The Procedural Schedule for Phases II and III

The Commission's September 18, 2003 Order in this cause also established that Phase II of this Docket would likely deal with issues related to the continued availability of unbundled local switching for mass market customers (the "UNE-P case") while Phase III would likely deal with issues related to the continued availability of unbundled high capacity loops and transport at certain locations (the "high capacity loop transport case"). The UNE-P case and the high capacity loop transport case were bifurcated into separate phases because the FCC established criteria the Commission must evaluate for each case will differ.

With respect to the UNE-P case, the FCC adopted the national presumption that, absent state commission findings to the contrary, CLECs are impaired without access to unbundled switching for mass market customers.⁵ ILECs must accordingly provide access to circuit switching on an unbundled basis to CLECs serving mass market end-user customers until such

⁴ See *Triennial Review Order* at ¶455 and footnote 1398.

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time as the applicable state commission finds that CLECs are not impaired in a particular market, or that existing impairments can be cured by the implementation of transitional unbundled circuit switching in a given market.

The *Triennial Review Order* does, however, impose an affirmative duty on state commissions to identify and alleviate impairment in the mass market.⁶ In order to achieve that objective, state commissions must determine the relevant geographic area to include in each market under their jurisdiction. In defining markets, the FCC directed state commissions to consider a number of factors including the locations of mass market customers actually being served, if any, by competitors; the variation in factors affecting the CLECs ability to serve each group of customers and the ability of ILEC competitors to target and serve specific markets profitably and efficiently using currently available technologies. The FCC specifically precluded state commissions from defining the relevant geographic area as an entire state.⁷

In defining the mass market, state commissions are also required to identify the appropriate cut-off for multi-line DS-0 customers.⁸ Until state commissions complete their review in this regard, ILECs are required to comply with the four line “carve-out” for unbundled switching established in the FCC’s *UNE Remand Order*.⁹

In evaluating whether requesting carriers in the markets defined are in fact impaired in those markets, the FCC established two different triggers as the principle mechanisms that

⁵ *Triennial Review Order* at ¶459. Mass market customers are residential and very small business customers who, unlike larger business customers, do not require high bandwidth connectivity at DS-1 capacity and above. See *Triennial Review Order* at footnote 1402.

⁶ *Triennial Review Order* at ¶¶459-460.

⁷ *Triennial Review Order* at ¶¶495-496.

⁸ The FCC notes that the appropriate cut-off may be the point where it makes economic sense for a multi-line customer to be served by a DS-1 loop. See *Triennial Review Order* at ¶497.

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states were to utilize in their impairment evaluations. The FCC established triggers are contingent on the number of carriers that self-provision switches or the number of competitive wholesalers offering independent switching capacity in a given market. If either of those triggers is met, the relevant state commission must, absent exceptional circumstances, conclude that no impairment exists in that geographic market.¹⁰

In applying the local switching, self-provisioning trigger, the FCC determined that the non-impairment trigger would be activated if three or more competing providers not affiliated with each other or the ILEC are each serving mass market customers in a particular market with use of their own local circuit switches. State commissions may, however, consider intermodal providers of service using self-provisioned switching to the extent the services such providers offer are comparable in cost, quality, and maturity to ILEC services.¹¹

The local switching, competitive wholesale facilities trigger applies when two or more competing providers not affiliated with each other or the ILEC each offer wholesale local circuit switching service to carriers serving DS-0 capacity loops in the market in question using their own switches. In making their assessments in this regard, state commissions may also consider intermodal providers of wholesale service using self-provisioned switching to the extent the services they offer are comparable in cost, quality, and maturity to ILEC services.¹²

In scenarios where the FCC defined triggers are satisfied, state commissions must determine that no impairment exists. If neither of the triggers discussed above has been

⁹ *Triennial Review Order* at ¶525 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3699, para. 2 (1999) (*UNE Remand Order*), reversed and remanded in part sub. Nom. *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (USTA), cert. denied sub nom. *WorldCom, Inc. v. United States Telecom Ass'n*, 123 S.Ct 1571 (2003 Mem.).

¹⁰ *Triennial Review Order* at ¶494.

¹¹ *Triennial Review Order* at ¶¶501-503 and 521-523.

¹² *Triennial Review Order* at ¶¶504-506 and 521-523.

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satisfied, however, state commissions must then consider whether switches actually deployed in the market at issue can permit competitive entry in the absence of unbundled circuit switching. As part of that analysis, the state commissions must consider operational and economic barriers as established by the FCC. Included among the operational barriers which must be considered are whether the ILEC's performance in provisioning loops, difficulties in obtaining collocation space due to the lack of space or delays in provisioning by the ILEC, or difficulties in obtaining cross-connects in an ILEC's wire center render entry uneconomic for a CLEC in the absence of unbundled access to circuit switching.¹³ The economic barriers which must be considered by state commissions include whether the cost of migrating ILEC loops to the CLEC switches with the cost of backhauling voice circuits to requesting telecommunications carrier switches from the end offices serving their end user customers render entry uneconomic for requesting carriers.¹⁴

If the above-discussed triggers have not been satisfied with regard to a particular market and the state commission review has resulted in a finding that CLECs are impaired without access to circuit switching on an unbundled basis in that market, the state commission must next consider whether the existing impairment would be cured by transitional or "rolling" access to circuit switching on an unbundled basis for a period of ninety (90) days or more.¹⁵ As defined by the FCC, "rolling" access means the use of unbundled circuit switching for a limited period of time for each end-user customer to whom a requesting telecommunications carrier seeks to provide service. If the state commission determines that transitional access to unbundled circuit switching would cure any impairment, the state commission must require

¹³ *Triennial Review Order* at ¶¶511-514.

¹⁴ *Triennial Review Order* at ¶¶521-523.

¹⁵ *Triennial Review Order* at ¶¶521-523.

ILECs to make unbundled circuit switching available to requesting telecommunications carriers for ninety (90) days or more.¹⁶

In the event that a state commission finds that no impairment exists in the market or that any impairment could be cured by transitional access to unbundled circuit switching, all CLECs in that market must commit to an implementation plan with the ILEC for the migration of their embedded unbundled switching mass market customer base within eleven months of the effective date of the *Triennial Review Order*. CLECs will no longer obtain access to unbundled circuit switching five months after the state determination of no impairment except where applicable on a transitional basis.¹⁷

The FCC also concluded in the *Triennial Review Order* that a seamless, low cost batch-cut process for switching mass market customers from one carrier to another is necessary for carriers to compete effectively in the mass market. Accordingly, state commissions must, in each of the markets they define, either establish an ILEC "batch-cut" process to render the hot-cut process more efficient and reduce per line hot-cut costs or issue detailed findings explaining why such a process is unnecessary.¹⁸ The aforementioned determinations regarding hot-cuts must be concluded by state commissions within nine months of the effective date of the *Triennial Review Order*. Further, state commissions must establish batch hot-cut processes according to the guidelines established in the *Triennial Review Order*.¹⁹

With respect to dark fiber, DS-3 and DS-1 loops ("high capacity loops"), the FCC affirmatively determined that, on a national basis, the limited deployment of high capacity loops

¹⁶ *Triennial Review Order* at ¶524.

¹⁷ *Triennial Review Order* at ¶¶525-532.

¹⁸ The FCC defines the "batch-cut" process as a process by which the ILEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch, giving rise to operational and economic efficiencies not available when migrating loops from one carrier's local circuit switch to another carrier's local circuit switch on a line by line basis.

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justified a finding of impairment. The FCC recognized, however, that there could well be alternative deployments of the high capacity loop types discussed above at particular customer locations which would justify findings of no impairment for the specific areas in question. The FCC accordingly delegated to the state commissions the responsibility of identifying the areas where competing carriers are not impaired without access to unbundled high capacity loops.

The FCC delineated two triggers which state commissions are to utilize in the conduct of their high capacity loop impairment analysis. If a state commission determines that the federal triggers for a finding of non-impairment have been satisfied for a specific type of high capacity loop at a particular customer location, the incumbent LEC will no longer be required to unbundle that loop type at the location according to the transition schedule adopted by the reviewing state commission. Incumbent LECs will, however, be required to make the unbundled high capacity loops available to qualifying carriers at locations other than those where a state commission's review has confirmed that no impairment exists and unbundling is no longer required.²⁰

The two non-impairment high capacity loop triggers delineated by the FCC include: (1) scenarios where a specific customer location is identified as being currently served by two or more unaffiliated competitive LECs with their own loop transmission facilities at their relevant loop capacity level (the "self-provisioning trigger"); and (2) scenarios where two or more unaffiliated competitive providers have deployed transmission facilities to the location and are offering alternative loop facilities to competitive LECs on a wholesale basis at the same capacity level (the "competitive wholesale facilities trigger"). Although both of the aforementioned triggers focus on whether there are two alternative loop providers at a particular customer location, they differ because the competitive wholesale facilities trigger can be

¹⁹ *Triennial Review Order* at ¶¶488-490.

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satisfied by alternative loop providers that have deployed their own facilities or by alternative providers that are using unbundled network elements but otherwise satisfy the "wholesaling" requirement of competitive wholesale facilities trigger.²¹

With respect to dedicated transport, the FCC generally determined from its capacity-based impairment analysis that requesting carriers are impaired without access to unbundled dark fiber, DS-3 and DS-1 transport ("unbundled transport"). The FCC concluded, however, that evidence suggests that requesting carriers are likely not impaired without access to unbundled transport in some particular instances. The FCC delegated to the state commissions the responsibility of further investigating the evidence in this regard in order to identify the specific routes where competitive carriers are not impaired without access to unbundled transport pursuant to two FCC established trigger mechanisms.²²

The first dedicated transport trigger established by the FCC is designed to identify routes along which the ability to self-provide transport facilities is evident based on the existence of several competitive transport facilities. Specifically, in scenarios where three or more competing carriers, not affiliated with each other or the incumbent LEC, each have deployed non-incumbent LEC transport facilities along a specific route, the FCC concluded that there exists sufficient evidence that competing carriers are capable of self-deploying, regardless of whether the carriers in question make such transport available to other carriers.²³

The second dedicated transport trigger established by the FCC is designed to identify where competitive wholesale alternatives are available. Specifically, the FCC concluded that competing carriers are not impaired where such competing carriers have available two or more

²⁰ *Triennial Review Order* at ¶328.

²¹ *Triennial Review Order* at ¶329.

²² *Triennial Review Order* at ¶394.

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alternative transport providers, not affiliated with each other or the incumbent LEC, immediately capable and willing to provide transport at a specific capacity on any given route between incumbent LEC switches or wire centers. In situations where state commissions find no impairment for a specific capacity of transport on a route, the incumbent LECs will no longer be required to unbundle that transport along the route identified in accordance with the transition schedule adopted by the relevant state commission.²⁴

As is apparent from the foregoing, this Commission has substantial responsibilities under the FCC's *Triennial Review Order* with respect to unbundled local switching and high capacity loops and transport. In order to fulfill these responsibilities, the Commission deems it appropriate and necessary to establish a procedural schedule which will be adhered to in the conduct of the proceedings necessitated by the FCC's *Triennial Review Order*.

The Commission first requires all telecommunications carriers who intend to participate in the proceedings envisioned herein for Phases II and III in this Docket to submit Petitions to Intervene within thirty (30) days of the effective date of this notice. Said Petitions shall set forth the petitioning party's position with respect to the national presumptions established by the FCC in its *Triennial Review Order* and the extent to which the petitioning party anticipates participating in the Phase II and III proceedings envisioned herein by the Commission.

In light of the extensive market and location specific evidence which the Commission will be required to accumulate and evaluate in Phases II and III, the Commission hereby gives notice that all providers of telecommunications service in Alabama, including those who do not specifically intervene, will be considered parties to the proceedings in this cause for purposes of

²³ *Triennial Review Order* at ¶400.

²⁴ *Id.*

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discovery.²⁵ The Commission also reserves its right to require any telecommunications provider that has not specifically intervened to participate as directed by the Commission.

As per Rule 16 of the Commission's Rules of Practice, the parties to this proceeding have the flexibility to engage in any discovery permissible under the Alabama Rules of Civil Procedure.²⁶ Any party seeking to invoke the Commission's assistance where discovery issues are concerned should file an appropriate motion requesting the action desired. With respect to the parameters of service and discovery, however, the Commission finds meritorious the proposed procedural guidelines jointly submitted by BellSouth Telecommunications, Inc. ("BellSouth") and CompSouth on October 20, 2003. We hereby adopt, for purposes of this Docket, the procedural guidelines regarding service and discovery jointly submitted by BellSouth and CompSouth. Said guidelines are attached hereto as Appendix I.²⁷ All parties shall adhere to the aforementioned guidelines to the fullest extent possible.

We further find that the protective agreement attached to the proposed procedural guidelines jointly submitted by BellSouth and CompSouth is approved for purposes of this Docket. Parties other than BellSouth and CompSouth and its membership are encouraged to use the protective order in question as a template. Said protective agreement is attached hereto as Appendix II.

The specific deadlines for the filing of testimony in the proceedings discussed herein and the dates of those proceedings are set forth below:

- January 20, 2003 - Direct testimony due in Phase II – (Local Circuit Switching)

²⁵ All providers of telecommunications service in Alabama will thus be required to respond to Discovery requests by the Commission and/or other parties who are actively participating in the proceedings herein.

²⁶ The parties are also required to serve all Discovery requests and responses with the Commission pursuant to Rule 16 of the Commission's Rules of Practice.

²⁷ Minimal modifications were made to the joint proposal of BellSouth and CompSouth.

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- March 5, 2003 - Rebuttal testimony due on Phase II – (Local Circuit Switching) and Direct testimony due in Phase III – (High Capacity Loops and Transport)
- March 24, 2003 - Rebuttal testimony due on Phase II – (Local Circuit Switching) and Rebuttal testimony due on Phase III – (High Capacity Loops and Transport)
- March 29 – April 2 - hearings on Phases II and III
- April 29 – Simultaneous Direct Briefs on all issues due
- May 14 – Simultaneous Reply Briefs on all issues due
- June 2 – Oral Arguments.

IT IS SO RULED.

DONE at Montgomery, Alabama this 28th day of October, 2003.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

APPENDIX I

SERVICE AND DISCOVERY GUIDELINES FOR DOCKET 29054

(1) Service of Pleadings, Discovery and Responses, Testimony, Briefs and Other Required Filings.

All filings by the Parties to this proceeding and the service of said filings by Parties shall be made as follows:

- (A) All filings required to be made to the Alabama Public Service Commission ("the Commission") shall be made pursuant to the ordinary rules of practice and procedure that apply to matters pending before the Commission, on the dates specified by the Commission and in the manner such filings are ordinarily made.²⁸
- (B) Every party to this proceeding shall provide every other party with an email address of a person who shall be authorized to receive service copies for that party of all filings that have to be filed at the Commission or otherwise served on the parties. If the person authorized to receive service for any party changes, that party shall be responsible for notifying all other parties of such change. For any party who has already intervened in this proceeding and who has not provided such an e-mail address, such parties shall do so promptly, and in no event less than ten (10) days following the date of this order. Failure to provide such an address shall excuse any party from any alleged failure to serve the party who has failed to provide the appropriate email address.
- (C) For the purpose of this proceeding, where a responsive submission is made to a party other than the Commission, service shall be deemed complete when the person making the filing sends the filing to the appropriate email address. For filings that require a responsive filing from other parties, such as interrogatories, requests for admission and requests for production of documents, the time for complying with the request shall begin when the party to whom the request is made receives the request; provided that if the filing is served electronically and is received after 4:00 P.M., the filing shall be treated as if it

²⁸ For purposes of this proceeding, the parties are required to submit electronic versions of their filings with the Commission in Microsoft Word® format for text documents and Excel® for spread sheets.

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were served and received on the next business day following the date on which the electronic filing was received. The parties are admonished to (1) request "receipt" and "read" indicators for all emails to insure that they are delivered and received in a timely manner and (2) to insure that the person designated to receive service, or someone acting in his or her stead, can regularly access email. Upon agreement of the parties, each party may designate up to three persons to receive service to alleviate any concerns about the availability of someone to receive service.

- (D) Because some filings, such as testimony, or the responses to filings such as interrogatories or responses to requests for production may be voluminous, the parties can elect, for non-confidential materials, to create a publicly accessible website where any such filing can be posted. If a party elects to post a responsive filing to this web site, and sends an email with a URL link to that publicly accessible website to the appropriate representatives of the other parties, such a posting shall be considered service of the responsive document. This vehicle may be used for the posting of testimony and responses to discovery, but shall not be used for the filing of matters that require a response from other parties, such as interrogatories, requests for admission or requests for the production of documents. This vehicle may not, however, be utilized for filings made in response to inquiries or directives from the Commission.
- (E) The purpose of providing for service in the foregoing ways is to facilitate the exchange of information between the parties so that this proceeding can go forward in a timely and efficient manner. Any disputes as to whether there has been compliance with these requirements should be discussed among the parties and resolved amicably if at all possible. Prior to bringing any dispute regarding these matters to the Commission, the parties will be required to certify that they have met and discussed the dispute, and succinctly detail exactly what the dispute is. The Commission will not entertain disputes involving a question of whether a filing was made timely unless the aggrieved party can demonstrate that it has been substantially prejudiced.

- (F) Where a party receives an electronic copy of a document, the party can request a paper copy of the document, but the responding party shall have one week after the request is made to furnish the paper copy.

(2) Discovery

- (A) Interrogatories, Requests to Produce Documents, Requests for Admissions.

(i) Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may be served requesting state-specific responses and information or, at a party's discretion, seeking responses and information concerning all nine states in the BellSouth region. It shall not be an appropriate or sustainable objection that such discovery seeks information concerning states other than the state in which the discovery is served. Subject to the Confidentiality provisions in Section 3 of this Appendix and any other evidentiary objections, discovery obtained in other states in the BellSouth region shall be available for use in this proceeding or where appropriate, in appeals from such state commission's orders to a court of competent jurisdiction or the FCC, subject to the normal rules applying to the admission of evidence.

(ii) Where requested, the parties shall respond, except as provided below, to Interrogatories, Requests to Produce and Requests for Admissions within 30 calendar days of service.

(iii) If a party believes that a particular request is unduly voluminous or would otherwise require additional time to respond to (and the request is not otherwise objectionable) the parties are admonished to work together to agree on an appropriate time frame for responding to the discovery, given the circumstances that exist at the time. In resolving such issues, the parties are directed to consider whether the requests can be broken into smaller groups, with some groups being responded to more quickly than others, or whether there is some other innovative way to address such issues, without bringing them to the Commission for resolution. Again, should a party seek the Commission's intervention in such a dispute, the complaining party should be prepared to explain in detail why it has been unable to reach a satisfactory resolution, and why it is prejudiced by the solution offered by the non-complaining party.

(iv) Objections to Discovery

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- (a) Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery shall be made within 10 calendar days after service. Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may include, but not be limited to:

- (1) Legal Objections

- (2) Objections to the time required for the production of region-wide discovery responses, in which event the objecting party shall provide a time frame and/or date certain for response to the region-wide discovery. Such Objections may include the fact that certain discovery responses may be voluminous and/or require answers from individuals from multiple states.

- (b) Where objections are made pursuant to (2)(A)(iv) (a) (1), the objecting party shall state whether it intends to provide a partial response subject to the objection. Parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.

- (c) Where objections are made pursuant to (2)(A)(iv) (a) (2), the parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.

(v) Where the parties are unable to resolve a discovery dispute as outlined in the proceeding sections, the parties shall seek expedited rulings on any discovery dispute, and the Commission shall resolve any such dispute expeditiously.

(B) Depositions

- (i) Depositions of employees, consultants, contractors and agents who will not be filing testimony in the above-styled Docket may be taken pursuant to the ordinary rules of practice and procedure before the Commission, including any objections that may be raised.
- (ii) Depositions of persons whom the parties will sponsor as witnesses in the above-styled Docket shall be limited as follows, after testimony is filed:

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- (a) Any party may depose a person who files testimony, subject to (2)(B)(ii)(b) below, after the filing of:
 - (1) direct testimony; and
 - (2) rebuttal testimony; and
 - (3) surrebuttal testimony
- (b) Once a witness has been deposed regarding such testimony in any state in the BellSouth region, that witness may only be deposed again (1) upon the request of the staff of the Commission, or if there is participation by a public agency such as a consumer advocate or the Attorney General, upon request by such public agency, or (2) by any party, if the testimony offered by the witness contains state specific information which is different from previous testimony filed by the witness, in which case the deposition will be limited to questions about the state specific material and related items.
- (c) Should a witnesses' testimony in this state change materially, other than by reason of the inclusion of state specific material discussed in (b) above, the witness may be deposed again, but only in connection with the testimony that has changed.
- (d) The purpose of these deposition requirements is to conserve the resources of the parties, and to encourage the parties to work jointly and cooperatively to conduct necessary discovery.
- (e) If the parties have a dispute regarding the taking of depositions in any particular situation, the parties are admonished to work together to resolve such differences, and if those differences cannot be reconciled, the parties should be prepared to present a very brief explanation of the dispute and the aggrieved party should be prepared to demonstrate how it is prejudiced by its failure to comply with the requests or objections of the opposing party.

(3) Confidentiality of Information

The parties may require the execution of a confidentiality agreement where appropriate.²⁹

²⁹ A confidentiality agreement deemed acceptable by the Commission follows this document and is identified as Appendix II.